

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

OPINION AND ORDER

10-cv-417-bbc
08-cr-150-bbc

v.

MARTIN RICHARDSON,

Defendant.

In an order entered on May 23, 2011, I denied defendant Martin Richardson's motion for post conviction relief but neglected to address the question whether to grant a certificate of appealability. I do so now.

Under Rule 11 of the Rules Governing Section 2255 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues

presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted). Defendant has not made a substantial showing of a denial of a constitutional right so no certificate will issue.

Although the rule allows a court to ask the parties to submit arguments on whether a certificate should issue, it is not necessary to do so in this case because the question is not a close one.

ORDER

It is ordered that no certificate of appealability shall issue in this matter.

Entered this 24th day of May, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge